84-1112

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Case No. _____

IN THE UNITED STATES SUPREME COURT

October 1984, TERM

In re Kenneth C. Moyer
and Lydia S. Moyer

Debtors

KENNETH C. MOYER and
LYDIA S. MOYER

Respondents

Vs.

FLEET FINANCE f/k/a
SOUTHERN DISCOUNT

Petitioner

ON WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR RESPONDENT

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STATEMENT OF THE ISSUES

Whether, pursuant to 11 U.S.C. §522(f) and Official Code of Georgia Ann. §44-13-100(a)(4), a debtor in bankruptcy may avoid a lien based on a nonpossessory, nonpurchase money security interest in household goods and furniture in cases where the value of said property is less than the amount of the debt secured by such lien.

Specifically, is the term "debtor's interest" in the household goods exemption strictly limited to mean only the "debtor's legal interest" in property (i.e., only the debtor's equity in property); or is the term inclusive of all the debtor's various interests in property as defined by 11 U.S.C. §541?

The glaring error in Petitioner's Statement is that it asserts the question before the Court relates to the homestead exemption. It does not. There is no real estate involved in this case. Furthermore, the debtors did not claim a homestead exemption in this case.

STATEMENT OF THE ISSUES

Whether, pursuant to 11 U.S.C. §522(f) and Official Code of Georgia Ann. §44-13-100(a)(4), a debtor in bankruptcy may avoid a lien based on a nonpossessory, nonpurchase money security interest in household goods and furniture in cases where the value of said property is less than the amount of the debt secured by such lien.

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SUMMARY OF THE ARGUMENT

A debtor in bankruptcy can avoid a lien based on a nonpossessory, nonpurchase money security interest in household goods and furniture. 11 U.S.C. §522(f); Official Code of Georgia Ann. §44-13-100(a)(4). Where a lien is based on a nonpossessory, nonpurchase money security interest in household goods and furniture, the debtor may create equity in the property by avoiding said lien. That is the meaning of the pertinent Georgia and Federal statutes; and that is the clear intent of Congress. If under Georgia law "debtor's interest" in the household goods exemption means only the debtor's legal interest, i.e., only the debtor's equity, the Georgia statute would violate the Supremacy Clause of the United States Constitution because such an interpretation would render the Federal statute meaningless.

ARGUMENT AND AUTHORITIES

DEBTOR MAY AVOID NONPOSSESSORY, NONPURCHASE MONEY LIEN ON HOUSEHOLD GOODS WORTH LESS THAN AMOUNT OF DEBT

Petitioner claims a nonpossessory, nonpurchase money security interest in certain of debtors' household goods and furniture. The value of the subject property is less than the amount of the debt owed to Petitioner.

The debtors filed a Motion to Avoid Petitioner's lien on the subject property pursuant to 11 U.S.C. §522(f), quoted in Petitioner's brief at pages 2 - 3. The debtors claimed an exemption in the subject property pursuant to Georgia's household goods exemption Official Code of Georgia Ann. §44-13-100(a)(4) quoted in Petitioner's brief at pages 3 - 4.

Petitioner argues that the phrase "debtor's interest" in Official Code of Georgia Ann. §44-13-100(a)(4) means only the debtor's "equity" in the subject property.

The Eleventh Circuit, in In re: Maddox, 713 F. 2d 1526 (11th Cir. Ga 1983), 9 C.B.C. 2d 568, responded

to that interpretation by adopting the language of the District Court decision as follows:

> "If the Court were to adopt the interpretation urged by the appellant 11 U.S.C. §522(f)(2)(A) would be a meaningless provision. The Georgia provision upon which the appellee bases his argument is identical in relevant part to the corresponding federal provision in 11 U.S.C. §522 (d)(3). If the phrase "debtor's interest" in 11 U.S.C. §522(d)(1) means only the debtor's equity, then a debtor could, under the federal scheme, avoid liens on property to the extent the property was free of liens. The result would be equally absurd if the Court were to hold that a lien might be avoided unless the lien were greater than the value of the property. In that case the phrase "debtor's interest" would mean the "debtor's equity" if the debtor had no equity but would mean the "debtor's legal interest" if the debtor had an equity interest in the property."

Judge William L. Norton, author of the treatise Norton on Bankruptcy, in deciding that the phrase "debtor's interest" in the Georgia statute does not mean only the debtor's equity in property, with respect to avoidable liens, stated the following:

> "... First, it seems clear that debtors have an interest even in their fully-encumbered property.

In re: Lovett, 7 B.C.D. 585, 586 (B.C. W.D. MO 1981); see In re: Giles, 9 B.R. 135, 138 (B.C. E.D. TENN 1981). Second, it does not seem likely that the Georgia legislature intended the word "interest" to refer only to the debtors' equity in the property they seek to exempt. The Georgia statute specifically provides exemptions for the purpose of bankruptcy; it identifies and sets monetary limits on categories of exemptible property but does not otherwise affect the lien avoidance nature of §522(f). Giles, supra at 138-9. However, even if the Georgia legislature intended only the equity value to be exempt, "the principle of federal supremacy, applied through the bankruptcy clause of the Constitution, forbids the state from frustrating the intent of Congress [in passing §522(f)] by such an interpretation of state law." In re: Meadows, 9 B.R. 882, 883 (B.C. N.D. GA 1981); see In re: Pine, 11 B.R. 595 (B.C. E.D. TENN 1981); In re: Bubrock, 6 B.C.D. 771, 773 (B.C. W.D. KY 1980); In re: Curry, 5 B.R. 282, 288 (B.C. N.D. OH 1980). A common sense interpretation of §522(f) with the legislative history of that provision indicates that a debtor may avoid a security interest in property that the debtor could exempt if the security interest did not exist. Section 522(f) in effect creates equity if the lien did not exist. In re: Farris, 8 B.R. 186 188 (B.C. E.D. TENN 1981). Section 522(f) is an expression of federal public policy favorable to Title 11 debtors founded on evidence of harmful

> practices of consumer lenders and expressed findings of Congress. Section 522(f) allows the lien to be terminated vis a vis an allowable exemption in that property. It is keyed to the exemption of such property as the exemption would exist in the absence of the consumer lien. The overwhelming majority of courts considering the question have given §522(f) this effect. To hold otherwise would render the provision meaningless and thwart the intention of Congress to remedy a burdensome practice upon unfortunate debtors." In re: Maddox, Adversary No. 80-1042 (June 3, 1983).

The legislative history of 11 U.S.C. §522(f) supports the position that the phrase "debtor's interest ... in household furnishings" does not mean "debtor's equity in household furnishings." Congress expressed its intention as follows:

> "The bill gives the debtor certain rights not available under current law with respect to exempt property. The debtor may avoid any judicial lien on exempt property, and any nonpurchase money security interest in certain exempt property such as household goods ... The second right will be of more significance for the average consumer debtor. Frequently, creditors lending money to a consumer debtor take a security interest in all of the debtor's belongings, and obtain a waiver by the debtor of his exemptions. In most of these cases, the debtor is unaware of the consequences of the forms he signs. The creditor's

> experience
> provides him with a substantial advantage. If the debtor encounters financial difficulty, creditors often use threats of repossession of all of the debtor's household goods as a means of obtaining payment."
>
> * * * *
>
> "The exemption provision allows the debtor, after bankruptcy has been filed, and creditor collection techniques have been stayed, to undo the consequences of a contract of adhesion, signed in ignorance, by permitting the invalidation of nonpurchase money security interests in household goods."

H. R. Rep. No. 595 Cong. 1st Sess. 127 (1977), reprinted in 1978 U.C. Code Cong. & Ad. News, pp. 5787, 6087 - 8. See also, In re: Hand, 5 B.R. 242, (B.C. S.D. IOWA 1980); In re: Meyers, 2 C.B.C. 2d 470 (B.C. E.D. MICH 1980).

Congress has explained that §522(f) permits the debtor to avoid a nonpossessory, nonpurchase money security interest in household goods and furniture "to the extent that the property could have been exempted in the absence of the lien." H. R. Rep. No. 595, 95th Cong., 1st Sess. 362 (1977), and S. Rep. No. 989, 95th Cong., 2d Sess. 76 (1978), U.S. Code Cong. & Admin.

News 1978, p. 5787 under subsection (e). Furthermore, Congress stated specifically that "there is a federal interest in seeing that a debtor that goes through bankruptcy comes out with adequate possessions to begin his fresh start." H. R. Rep. No. 95-(79)-959, 95th Cong. 1st Sess. 126 (1977).

Since the language in the Georgia exemption statute was copied from and is identical to the federal exemption statute (except some of the amounts), it is logical to conclude that the Georgia legislature intended the State exemption statute to mean the same as the federal exemption statute. In view of the broadened definition of property under Bankruptcy Code §541, it appears that the phrase "debtor's interest" was used for the purpose of expanding, and not for the purpose of limiting the debtor's ability to avoid liens.

Furthermore, we question the ability of a State to limit the nonpurchase money exemption to the equity over and above the amount of avoidable liens. It may be that a debtor can claim exemptions only in the equity in the case of non-avoidable, purchase money

liens - but that is not the issue before this Court. Petitioner is trying to confuse the issue by citing authorities relating to non-avoidable, purchase money liens.

The United States District Court of Virginia and other Courts have held that a State may not opt out of the lien avoidance provision of §522(f). In re: Garrido, 11 C.B.C. 2d 506 (B.C. S.D. CAL 1984); In re: Lunsford, 11 C.B.C. 2d 423 (B.C. N.D. OHIO 1984); Eanes v. Shepherd, 33 B.R. 984 (D.C. W.D. VA 1983); In re: Rodgers, 5 B.R. 761 (B.C. W.D. VA 1980); In re: Barto, 8 B.R. 145 (B.C. E.D. VA 1981); In re: Strain, 16 B.R. 797 (B.C. D ID 1982); In re: Meadows, 9 B.R. 882 (B.C. N.D. GA 1981); In re: McKelvey, 20 B.R. 405 (B.C. D AZ 1982); and Curry v. Associates Financial Services, 7 B.C.D. 968 (D.C. N.D. OH).

A State which opts out of the federal exemption scheme must provide debtors with exemptions that are consistent with policies underlying §522. In re: Rhodes, 8 B.C.D. 204 (B.C. M.D. TENN). Under the Supremacy Clause, any State legislation which frus-

trates the full effectiveness of federal law is invalid. U.S.C.A. Consti. art. 6, Cl. 2. In re: Lawson, 11 C.B.C. 2d 358 (B.C. E.D. KY 1984); In re: Hill, 4 B.R. 310 (B.C. N.D. OH 1980). Section 522(f) means that a debtor may avoid a lien of the described type if the debtor could exempt the property if the lien did not exist. States which opt out of the federal exemptions cannot validly change this result by attempting to make only the debtor's "equity" exempt as a matter of State law. In re: Farris, 8 B.R. 186(B.C. E.D. TENN 1981); In re: Fisher, 6 B.R. 206 (B.C. N.D. OH 1980). See, McLaughlin, Lien Avoidance by Debtors in Chapter 13 of the Banrkuptcy Reform Act of 1978, 58 Am. Bankr. L. J. 45 at pp. 61 - 64.

Petitioner relies on the Sixth Circuit decision in Pine vs. Credit Thrift of America, 9 C.B.C. 2d 271 (6th Cir. 1983). That Court held that both Georgia and Tennessee law concerning bankruptcy exemptions were substantially the same, quoting the following Tennessee law:

> "TCA §26-2-112 provides as follows: Exemptions for the purpose of bankruptcy. - personal property exemptions as provided for in this part, and the other exemptions as provided in other sections of the Tennessee Code Annotated for the citizens of Tennessee, are hereby declared adequate and the citizens of Tennessee, pursuant to §522(b)(1), public law, 95-598 know as the Bankrutpcy Reform Act of 1978, Title 11 U.S.C. §522(b)(1), are not authorized to claim as exempt the property described in the Bankruptcy Reform Act of 1978, 11 U.S.C. §522(d)."
>
> * * * *
>
> "TCA §26-2-102 provides as follows: Personal property to the aggregate value of four thousand dollars (4,000.00) debtor's equity interest shall be exempt from execution, seizure or attachment ... [The Debtor] may select for exemption the items of the owned and possessed personal property ... up to the aggregate value of four thousand dollars (4,000.00) debtor's equity interest."

In Pine, the Court did not explain how it reached the conclusion that Georgia and Tennessee law were identical. The language in the Tennessee statutes is not even slightly similar to the language in the Georgia statutes. The Georgia statute is quoted in Petition-

er's brief at pages 3 - 4 and in its appendix. Furthermore, whether or not it had the right to do so, the Tennessee legislature chose to use the term "debtor's equity interest." This term is significantly different even from the phrase "debtor's equitable interest." For example, a debtor's right to redeem property in which it had no equity has been held to be an "equitable interest" in such property. Pine does not appear to be a well reasoned case. The only authority cited in the entire decision was Matter of McManus, 681 F. 2d 353 (5th Cir. 1982).

The Eleventh Circuit, in Maddox, supra, declined to follow McManus, pointing out that Georgia, unlike Louisiana, has not enacted a specific provision to avoid the effects of subsection §522(f) in addition to opting out of 11 U.S.C. §522(d). In re: Maddox, 9 C.B.C. 2d at 572 - 3. Furthermore, the Eleventh Circuit indicated that even if the Georgia legislature had enacted such a provision, it might have chosen not to follow the McManus case, and to instead follow the dissenting opinion of Judge Dyer, (an Eleventh

Circuit Judge sitting on the McManus panel by designation). The Eleventh Circuit found persuasive Judge Dyer's argument that the federal statute does not permit a State to opt out of the lien avoidance provision of §522(f). See also the cases cited above holding that a State may not opt out of §522(f).

The most thorough evaluation of the issue before this Court appears to be contained in In re: Lawson, 11 C.B.C. 2d 358 (B.C. E.D. KY 1984). After a review of legislative history, the Court in Lawson concluded that the provisions of §522 should not be restricted to mean only the debtor's legal interest in property, but should also be construed as encompassing a debtor's "equitable" interest in property. That Court stated at page 362 - 363:

> "Section 522(e) of the Bankruptcy Code, 11 U.S.C. §522(e), provides '[a] waiver by the debtor of a power under subsection (f) ... of this section to avoid a transfer ... is unenforceable in a case under this title.' Section 522(e) makes no distinction between a contractual and a statutory waiver of such power by a debtor. In this instance the Kentucky statute does not become operative until a security agreement

is voluntarily executed by the debtor, whereupon the statute becomes part of the agreement and results in an unenforceable waiver.

The effect of section 522(e) of the Bankruptcy Code was not addressed by the Sixth Circuit in In re: Pine, 717 F. 2d 881 [9C.B.C. 2d 271] (6th Cir. 1983). Consequently, the decision in that case is not controlling in this case. Nevertheless some comment on that case seems appropriate.

In Pine the Court reasoned that the lien avoidance provisions of section 522(f) are applicable only with respect to the debtor's "interest" or "equity interest" in property on the date of bankruptcy and consequently are unavailable when a state statute denies the debtor an exemption in encumbered property. This reasoning overlooks the fact that section 522(d)(3) of the Bankruptcy Code, 11 U.S.C. §522(d)(3), provides an exemption only for the debtor's "interest" in household furnishings, household goods, etc. The rationale adopted by the Sixth Circuit in Pine would render the lien avoidance provisions of section 522(f) meaningless even if those few states where the exemptions provided for by section 522(d) remain available to debtors.

This rather obvious fact was recognized by the Eleventh Circuit Court of Appeals in In re: Maddox, 713 F. 2d 1526 [9 C.B.C. 2d 568] (11th Cir. September 9, 1983), decided two days after the decision of the Sixth Circuit in the Pine case. The Court in the Maddox case, in construing the identical Georgia

statute involved in the Pine case, upheld the rights of a debtor claiming exemptions under Georgia law to avoid a nonpossessory, nonpurchase-money lien on household goods. The Court in Maddox characterized as absurd the rationale adopted by the Sixth Circuit that sections 522(b)(2)(A) and 522(f) of the Bankruptcy Code in combination permit a debtor to avoid a nonpossessory, non-purchase-money lien on exempt property only to the extent the property in question is free of such a lien. The Sixth Circuit arrived at the foregoing result in Pine by concluding that the word "property" as used in section 522(b)(2)(A) of the Bankruptcy Code does not mean property in the layman's sense but rather denotes only legal interests in property because 'the Act throughout characterizes property in terms of various security and other interests.' With due respect to the Sixth Circuit, the statement in the quoted language is simply contrary to fact.

Section 541 of the Bankruptcy Code defines property of the estate to include 'all legal or equitable interests of the debtor in property as of the commencement of the case.' 11 U.S.C. §541. Section 522(b) of the Code begins with a cross reference to section 541 and provides as follows:

> §522 Exemptions
> "(a)...
> "(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either-
> "(1) property that is specified under subsection (d) of this section, unless the State law

> that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative, (2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; ..."
>
> 11 U.S.C. §522.
> We have emphasized the word "property" each time it appears in this section. Obviously, the first time it appears it is used in the same sense as it is used in section 541 and includes equitable as well as legal interests of the debtor in property. Apparently, the Court in Pine would concede that the word "property" as used in section 522(b)(1) encompasses equitable interests of the debtor; otherwise, as previously noted, the lien avoidance provisions of section 522(f) of the Code would be unavailable to debtors even in those states that have not enacted opt-out legislation. Why the word "property" as used in section 522(b)(2)(A) should be interpreted to exclude the debtor's equitable interest in property is a mystery."

The Lawson Court also noted the following at pages 368 - 371:

"[2] There is not even the slightest hint in legislative history of an intention on the part of Congress to permit States to undercut the lien avoidance provisions of section 522(f) of the Bankruptcy Code in conjunction with opt-out legislation restricting debtors seeking relief in bankruptcy to exemptions provided by State law. The Senate bill, which restricted debtors to the exemptions provided by State law, contained the exact lien avoidance provision that appears in present law. The language of the House and Senate reports explaining this provision is substantially identical. Both reports say "property may be exempted even if it is subject to a lien. ..." and that the debtor may avoid a nonpurchase-money lien on certain household goods that could have been exempted in the absence of the lien. Unlike the Court in the Pine case, this Court is unable to find any inconsistency whatsoever between the legislative history and the plain language of sections 522(b)(2)(A) and 522(f) of the Bankruptcy Code."

* * * *

"Actually, as is quite evident when one delves into the matter, Congress viewed the taking of a nonpossessory, nonpurchase-money security interest in household goods, tools of the trade and health aids as an unfair credit practice that should be discouraged. Consequently, it is unlikely Congress intended to permit the States to override Federal policy and encourage a practice that Congress intended to restrict. The following history is relevant."

* * * *

"...the National Commission on Consumer Finance recommended that a creditor not be allowed to take other than a purchase money security interest in household goods. Consumer Credit in the United States, Report of the National Commission on Consumer Finance (December 1972) at xvi. It was the view of the Commission that in the event of default a nonpurchase-money security interest in household goods and the accompanying right to repossess or threat to repossess such goods has far too disruptive an impact on the family life of the debtor to be in the public interest. Id. at 27. This recommendation of the National Commission on Consumer Finance was adopted and codified by the Commission on Bankruptcy Laws of the United States in its subsequent report to Congress in 1973. Report of the Commission on Bankruptcy Laws of the United States, July 1973, Part I, at 169-170, and Part II, at 126-30. The Bankruptcy Commission recommended that a waiver of exemptions be unenforceable by a creditor that does not have security in the property, that judicial liens not be enforceable against exempt property, and that nonpurchase-money security interest be unenforceable as to wearing apparel, household goods, and health aids. Id. The applicalbe provisions of the Bankruptcy Commission Bill invalidating such liens on protected exempt property were self-executing in that such liens were rendered unenforceable as a matter of law. Id., Part II, at 126, 130; H.R. 10792, 93rd Cong., 1st Sess. §4-503(f). However, the final version of the Bankruptcy Code as enacted

by Congress requires affirmative action by an individual debtor pursuant to section 522(f) of the Bankruptcy Code to avoid liens on selected categories of exempt property."

* * * *

"The Uniform Exemptions Act, drafted by the National Conference of Commissioners on Uniform State Laws, approved in 1976 and recommended for enactment in all states, would preclude enforcement of a nonpossessory, nonpurchase-money security interest in furnishings and appliances reasonably necessary for one household, as well as certain other property. See section 11, Uniform Exemptions Act. The comment to section 11 states that restrictions on enforceability of nonpurchase-money security interests in household goods were recommended by the National Commission on Consumer Finance, as previously discussed in this memorandum. The comment also cites FTC's proposed Trade Regulation Rules on Credit Practices §444.2(a)[1] and FRB's proposed Rules on Uniform Credit Practices §228.2(a)(4)[2]. These proposed regulations of the Federal Trade Commission and Federal Reserve Board were based on the conclusion that the taking of a nonpossessory, nonpurchase money security interest in household goods should be defined as an unfair trade practice.

The Report of the Presiding Officer following hearings by the Federal Trade Commission on its proposed regulation states:

> "The real purpose of taking a security in such property is simply to obtain a device to terrorize consumers or to harass

> them until payments are made on the loans. Even if such goods are repossessed, the costs of pick-up, storage, and sale would probably exceed the amount of the proceeds."
>
> It should be noted that on March 1, 1984 the Federal Trade Commission issued a final rule defining the taking of " a nonpossessory security interest in household goods other than a purchase money security interest" to be an unfair act or practice within the meaning of Section 5 of the Federal Trade Commission Act. This regulation becomes effective March 1, 1985. See 49 Fed. Reg. 7740, at 7761-68; 7789-90 (March 1, 1984) (to be codified at 16C.F.R. Part 444).
> Thus a practice which Congress intended to discourage by adoption of section 522(f) of the Bankruptcy Code will become a prohibited practice on March 1, 1985.
> The suggestion that Congress has permitted the several States to override Federal policy in this matter must be rejected."

Petitioner cites U.S. vs. Security Industrial Bank, 49 U.S. 70, 103 S. Ct. 407 (1982). This case deals only with the constitutionality of applying 11 U.S.C. 522(f) retroactively. It is not relevant in the instant case.

In Matter of Sullivan, 680 F. 2d 1131 (7th Cir. 1982), also cited by Petitioner, the Court held that a state statute providing for $300.00 in the homestead and related wild card exemptions did not conflict with

federal law which allowed the debtor to claim $7,900.00 in the same exemptions. Upon examining legislative history, that Court found that it was the intent of the House to give the debtors a "fresh start" but the Court could find no such intent on the part of the Senate (680 F. 2d at 1135-36). Since the intent of the House could not be treated as the intent of Congress, the Sullivan Court declined to follow Cheeseman v. Nachman, 656 F. 2d 60 (4th Cir. 1981).

The Fourth Circuit in Cheeseman found that the intent of Congress as to 11 U.S.C. §522(b)(1) and (2) was not to permit states to eliminate federal exemptions entirely, but to permit similar state exemptions in lieu of the federal exemptions. The state law in that case allowed only one spouse to claim a homestead exemption, whereas federal law allows both spouses to claim said exemption. Noting that the "...state exemptions were retained so that exemption levels could be set at a level commensurate with the standard of living in the various parts of the country" (p. 64), the Court held that the foregoing state law conflicted with federal

law. The Fourth Circuit, the Eleventh Circuit and the numerous cases cited above are correct. Section 522 (b)(1) and (2) authorize states to take away the debtor's right to elect the federal exemptions only to the extent that they provide alternative exemptions consistent with federal law.

Nor is Wallis v. Clark, Superior Court of Dekalb County, 166 Ga. App. 775 (1983), relevant to the issues in this case. That case dealt with the homestead exemption under O.C.G.A. §44-13-100(a)(1). In the instant case, the exemption claimed is the distinct and separate household goods and furniture exemption under O.C.G.A. §44-13-100(a)(4). Furthermore, Wallis dealt with a nonavoidable lien, i.e., the first mortgage on the debtor's residence, a purchase money security interest. Wallis sued the County Clerk for failing to record a deed, claiming that said failure caused him to lose his bankruptcy homestead exemption. Apparently because the house had been vacated and was vandalized, the Trustee was unable to sell the house for more than the amount due on the mortgage. The

Trustee therefore abandoned the house to the mortgage holder. The Court of Appeals held that the debtor lost his claimed homestead exemption, not because of the Clerk's error, but because there was no value left after the nonavoidable purchase money debt had been paid off. In the instant case, there is no purchase money security interest on the subject property.

Therefore, the authorities relied on by Petitioner provide no basis for this Court to overrule the Eleventh Circuit decision in this case.

CONCLUSION

Respondents request this Court to sustain the decision of the Eleventh Circuit and to hold that the term debtor's "interest" under O.C.G.A. §44-13-100(a)(4) is not restricted to the debtor's "equity" in property with respect to avoidable liens based on nonpossessory, nonpurchase money secuirty interests in household goods and furniture. Respondents further request that this Court hold that a State may not eliminate such exemption in its entirety and that any State law which purports to do so is void as a violation of the Supremacy Clause of the United States Constitution. In the alternative, Respondents request that certiorari be denied.

Respectfully submitted,

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Rose H. Staples

ROSE H. STAPLES

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and exact copy of the foregoind Brief to:

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4900 Highway 78
Lilburn, Georgia 30247

by placing same in a properly addressed envelope with sufficient postage affixed thereto and depositing same in the United States Mail.

This 26 day of March, 1985.

PAUL C. PARKER & ASSOCIATES

Paul C. Parker

ROSE H. STAPLES
Attorney for Respondent